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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

No. 546—OCTOBER TERM, 1934.

WILLIAM ROBERTS, as Receiver of the Manhattan Railway Company, and others,

Petitioners,

against

THE CITY OF NEW YORK, and others,

Respondents.

PETITIONERS' REPLY BRIEF.

This brief is submitted only because the respondents' brief relies most strongly upon a contention not heretofore emphasized.

They repeatedly refer to the determination of the Public Service Commission, and to the failure of Manhattan Railway Company to appeal therefrom, as if the Commission had made some determination as to value which is *res adjudicata* herein. There was no determination bearing upon value in condemnation. The determination was under a statute agitated by property owners and designed to clear the way for condemnation. The statute authorized condemnation if the Commission should find *either* lack of public convenience and necessity *or* obstruction to the street. The obstruction was indisputable, so that an attempt to review the Commission's determination would have been futile. The statute expressly provided for later condemnation of "structure", "easements" and "franchises" (Laws

1919, Chap. 611; R. Ex. AX, 1877), for which just compensation was to be paid. At the date of the determination conditions were not the same as at the date of condemnation; for example, the Commission found (April 22, 1921) that the trend of traffic on the spur was downward whereas, at the date when title vested (December 7, 1923), such trend was upward (Petitioners' Brief, p. 17).

This contention, which has so large a place in respondents' brief, is neither material nor relevant.

Dated, December 22, 1934.

Respectfully submitted,

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